

ORIGINAL

Decision No. 76397

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of }  
AIR CALIFORNIA for a Certificate of }  
Public Convenience and Necessity to }  
provide air service between Palm }  
Springs, on the one hand, and San }  
Jose/Oakland/San Francisco on the }  
other hand. }

Application No. 51194  
(Filed June 6, 1969)

- Brownell Merrell, Jr., for Air California, applicant.
- Fred R. Metheny and Edward L. Colby, for City of Palm Springs, intervener.
- Darling, Mack, Hall & Call, by Donald K. Hall, for Western Air Lines, Inc., protestant.
- Raymond P. Farlin, for City of San Jose; J. Kerwin Rooney, for Port of Oakland; James B. Brasil, for City and County of San Francisco and San Francisco Chamber of Commerce; Fred W. Burtner, for The Association of Metropolitan San Jose; Gordon E. Paulus, for Palm Springs Convention and Visitors Bureau and City of Palm Springs; interested parties.
- McInnis, Fitzgerald & Wilkey, by Laurence L. Pillsbury, for Pacific Southwest Airlines, protestant and interested party.
- Richard D. Gravelle, Counsel, for the Commission staff.

O P I N I O N

By this application, Air California seeks a certificate of public convenience and necessity as a passenger air carrier between Palm Springs and San Jose/Oakland/San Francisco.

Public hearing was held before Examiner Porter at Los Angeles on September 10-11-12 and September 17-18-19-23-24 at San Francisco.

A motion to dismiss the protest of Pacific Southwest Airlines was made by Air California and joined in by the City of Palm Springs. Said motion was denied by the Examiner without prejudice to renew it at a later time. Palm Springs renewed the motion in its brief.

Pacific Southwest Airlines participation in the hearing was minimal and would not affect the result herein. The examiner's ruling denying the motion is affirmed.

Applicant presented evidence as to the need for the proposed service. Palm Springs was the leading supporter therefor pointing out that it is a unique community in the economic sense in that its major industry is resort oriented, and its economy revolves around the convention delegate and the visitor.

The main area of conflict is between Air California and protestant Western Air Lines, Inc., with respect to the marketing study (Exhibit No. 5) presented by the applicant and protestants Exhibits Nos. 36 and 37. Western's witness made certain adjustments to the traffic projection figures developed by Air California and computed a projected loss whereas Air California in Exhibit No. 5 and Exhibits Nos. 18 and 38 had projected first year operating profits for the routes herein involved.

Prognosticating the precise level of passenger traffic that will develop in a market heretofore served by a monopoly carrier is a most difficult task, the science thereof being somewhat obscure. The Commission has witnessed dramatic increases in certain markets and exceedingly dull performances in others, though it has been its experience that protestants forecast dire results and applicants predict ultimate if not instant success. One thing is certain in this proceeding, the margin of profitability or loss is contingent upon a total number of passengers that is not very large. The Commission staff, utilizing the Air California projections, pointed out that a reduction of 5,000 passengers would result in an operating loss.

We are concerned here with a proposal that will, according to the evidence, benefit the traveling public and the community of Palm Springs. Lower fares have historically benefited traffic and the fare reduction here is some 23 percent. Traffic will undoubtedly benefit from improved scheduling and more available schedules. However, the public will not be benefited by better service at the cost of financial deterioration to both the existing and the incoming carrier. Air California is not a financially strong operator. Further drain of its resources will be detrimental to its existence. The Public Utilities Code makes provision for discontinuance by a carrier of unprofitable routes, (Section 2769.5). The Commission in granting the application places Air California on notice that it must closely observe the operation of its route with respect to profitability and exercise sound managerial discretion in determining whether or not its service should be continued.

Findings

1. Air California possesses the business experience in the field of air operations, the financial stability and the requisite insurance coverage to receive a certificate of public convenience and necessity.
2. There presently exists a public need for the passenger air carrier service proposed by Air California.
3. Air California is economically capable of giving adequate service to the communities involved flying the type of aircraft and minimum schedule proposed and charging the fares set forth in the application.

Based upon the foregoing findings of fact, the Commission concludes that the application should be granted.

Air California is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity be granted to Air California authorizing it to operate as a passenger air carrier as defined in Section 2741 of the Public Utilities Code, as set forth in Appendix A, attached hereto and hereby made a part hereof.

2. The authority granted in paragraph 1 is limited to the specific route segment set forth in Appendix B and shall not be combined with previously granted authorities.

3. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant

is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the insurance requirements of the Commission's General Order No. 120-A. Failure to file such reports in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Order No. 120-A, may result in a cancellation of the operating authority granted by this decision.

- (b) Within one hundred and twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than five days after the effective date of this order or not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 105-A.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 4th day of November, 1969.

William J. Sproul, Jr.  
President

[Signature]

[Signature]

Thomas L. Stevenson  
Commissioners

Commissioner A. W. Gatov  
abstained.

Route 5

Between Palm Springs Municipal Airport, on the one hand, and San Jose Municipal Airport, Oakland International Airport and San Francisco International Airport, on the other hand, with each of the last three-named airports being either a terminal or intermediate point for this route.

CONDITIONS

Minimum number of round-trip schedules daily between points shown shall be:

- g. Between Palm Springs Municipal Airport, on the one hand and San Jose Municipal Airport, Oakland International Airport and/or San Francisco International Airport, on the other hand..... 1

RESTRICTIONS

No passengers shall be accepted for transportation solely between, nor shall operations be conducted by way of the following pairs of points:

- j. Palm Springs Municipal Airport - Orange County Airport
- k. Palm Springs Municipal Airport - Ontario International Airport
- l. Palm Springs Municipal Airport - Hollywood-Burbank Airport

Issued by California Public Utilities Commission.

Decision No. 76397, Application No. 51194.